



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 09 - 9

BILL 29 (2009)

A BILL FOR AN ORDINANCE

RELATING TO CIVIL FINES FOR VIOLATIONS OF THE ETHICS LAWS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. The council finds that certain elected and appointed officers and employees who are exempt from civil service should be subject to civil fines for violations of the standards of conduct. In addition, the council finds that certain elected and appointed officers and exempt employees have significant discretionary or fiscal power and should be subject to civil penalties for ethical misconduct.

Article XI of the Revised Charter of the City and County of Honolulu 1973, as amended ("Revised Charter") requires, and the public relies upon, city officials to conform their conduct to the highest ethical standards. In addition, officers and employees exempt from the civil service may be exposed to opportunities to abuse their power. As a result, a breach of the standards of conduct by an officer or employee exempt from civil service may cause financial harm to the city and its citizens or may undermine the public's trust in government.

Furthermore, authorizing the city Ethics Commission to impose civil fines against officers and employees exempt from civil service is intended to deter unethical conduct by public officials. It should also encourage officials to seek advice from the Ethics Commission before they act. Consequently, unethical conduct should be reduced, thereby fostering the public's faith in city officials.

Procedural safeguards ensure fair treatment for those accused of a violation that may result in a civil fine. First, no fine may be imposed without examining the aggravating and mitigating circumstances surrounding the violation. Second, the rights of an officer or employee who is accused of an ethics law violation will be protected by following the procedures described in the Hawaii Administrative Procedures Act, Chapter 91, Hawaii Revised Statutes.

The purpose of this ordinance is to implement the amendments to Sections 11-106 and 11-107, Revised Charter, as ratified by the voters in the 2008 general election, that authorize the city Ethics Commission to impose civil fines on certain city officers and employees who have significant discretionary or fiscal power, as determined by ordinance, for violations of the standards of conduct.



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SECTION 2. Section 3-8.4, Revised Ordinances of Honolulu 1990 ("Financial disclosures"), is amended by amending subsection (f) to read as follows:

"(f) Penalty.

(1) Officers and Employees.

(A) Late Filing. Any officer or employee of the city whose required financial disclosure is not received by the ethics commission or the city clerk, whichever is applicable, by the close of business on the deadline date specified in subsection (b), shall be given a notice of violation of the provisions of this section by the ethics commission or the city clerk, whichever is applicable. The notice shall state that the city officer or employee has 10 days from receipt of the notice in which to file the required financial disclosure or be subject to the penalties provided in this paragraph and Section 3-8.5. Any city [elected officer,] officer or employee, who has received this notice and fails to file the required disclosure within 10 days of receipt of the notice, shall be subject to a civil fine according to the following schedule: \$100.00 for the first late filing; \$200.00 for the second late filing; and thereafter, for each additional late filing, the fine imposed for the previous late filing plus \$200.00. Any penalty or fine shall be imposed after an opportunity for a hearing conducted by the ethics commission under HRS Chapter 91.

(B) Failure to File. Any officer or employee of the city who fails to file a financial disclosure as required in this section within 30 days from receipt of the notice of violation referred to in paragraph (A), shall, in addition to any civil fines imposed under paragraph (A), be subject to:

- (i) The provisions of Section 3-8.5 relating to noncompliance; or
- (ii) A criminal penalty of a fine of not more than \$2,000.00 or of imprisonment for not more than one year, or of both such fine and imprisonment,

or to both (i) and (ii).



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(2) Candidates.

- (A) Late Filing. Any candidate whose required financial disclosure is not received by the city clerk by the close of business on the deadline date specified in subsection (b), shall be given a notice of violation of the provisions of this section by the city clerk. The notice shall state that the candidate has 10 days from receipt of the notice in which to file the required financial disclosures or be subject to the penalties provided in this paragraph. Any candidate, who has received this notice and fails to file the required disclosure within 10 days of receipt of the notice, shall, upon election to office, be subject to the provisions of Section 3-8.5 and a civil fine according to the following schedule: \$100.00 for the first late filing; \$200.00 for the second late filing; and thereafter, for each additional late filing, the fine imposed for the previous late filing plus \$200.00. Any penalty or fine shall be imposed after an opportunity for a hearing conducted by the ethics commission under HRS Chapter 91.
- (B) Failure to File. Any candidate who fails to file a financial disclosure as required in this section within 30 days from receipt of the notice of violation referred to in paragraph (A), shall, in addition to any civil fines imposed under paragraph (A), be subject to a criminal penalty of a fine of not more than \$2,000.00 or of imprisonment for not more than one year, or of both such fine and imprisonment.

(3) Rules.

The ethics commission shall have the authority to establish rules to implement subdivisions (1) and (2)."

SECTION 3. Section 3-8.5, Revised Ordinances of Honolulu 1990 ("Violation—Penalty") is amended by amending subsection (d) to read as follows:

- "(d) In addition to any other penalty, sanction or remedy provided by law, the ethics commission may impose a civil fine against a former or current [elected] officer or exempt employee of the city who has been found by the ethics commission to have violated the standards of conduct in Article XI of the revised charter or this article. For the purposes of this section, ["elected officer" means a member of the council, the mayor and the prosecuting attorney.] "officer" has the same meaning as in Section 13-101.4 of the revised charter and "exempt employee" means all employees of the executive and legislative branches of the City and



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County of Honolulu who are exempt from civil service pursuant to revised charter Sections 6-1103(a) – (d) and (i) and 6-1104(a) – (d), but shall not mean exempt employees in clerical positions or employees within a bargaining unit as described in Section 89-6, Hawaii Revised Statutes.

- (1) Where a civil fine has not otherwise been established in this article, the amount of the civil fine imposed by the ethics commission for each violation shall not exceed the greater of \$5,000 or three times the amount of the financial benefit sought or resulting from each violation.
- (2) In determining whether to impose a civil fine and the amount of the civil fine, the ethics commission shall consider the totality of the circumstances, including, but not limited to:
 - (A) The nature and seriousness of the violation;
 - (B) The duration of the violation;
 - (C) The effort taken by the [elected] officer or exempt employee to correct the violation;
 - (D) The presence or absence of any intention to conceal, deceive or mislead;
 - (E) Whether the violation was negligent or intentional;
 - (F) Whether the [elected] officer or exempt employee demonstrated good faith by consulting the ethics commission staff or another government agency or an attorney;
 - (G) Whether the [elected] officer or exempt employee had prior notice that his or her conduct was prohibited;
 - (H) The amount, if any, of the financial or other loss to the city as a result of the violation;
 - (I) The value of anything received or sought in the violation;
 - (J) The costs incurred in enforcement, including reasonable investigative costs and attorneys' fees;



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- (K) Whether the [elected] officer or exempt employee was truthful and cooperative in the investigation; and
- (L) Any other relevant circumstance.
- (3) No civil fine shall be imposed unless the requirements of Chapter 91 and HRS Section 46-1.5(24), have been met.
- (4) The ethics commission may recover any civil fines imposed pursuant to this section and may, through the corporation counsel, institute proceedings to recover any civil fines.
- (5) Pursuant to Chapter 1, Article 19, the ethics commission shall have executive authority to add unpaid fines by administrative order to any taxes, fees or charges.
- (6) Notwithstanding Section 3-6.3(c), no civil fine may be imposed under this subsection:
 - (A) If the applicable complaint or request for advisory opinion is submitted more than four years after the alleged violation occurred; or
 - (B) For an investigation commenced by the commission on its own initiative, if the investigation is commenced more than four years after the alleged violation occurred."

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, bracketed material, or the underscoring.



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CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

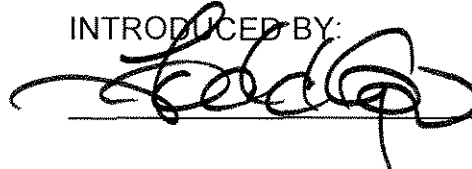
ORDINANCE 09-9

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SECTION 5. This ordinance shall take effect 30 days after its approval.

INTRODUCED BY:




DATE OF INTRODUCTION:

MAR 6 2009

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:



Deputy Corporation Counsel

APPROVED this 10th day of June, 20 09.



MUFU HANNE MANN, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 09 - 9

BILL 29 (2009)

Introduced: 03/06/09 By: TODD APO

Committee: EXECUTIVE MATTERS
AND LEGAL AFFAIRS

Title: A BILL FOR AN ORDINANCE RELATING TO CIVIL FINES FOR VIOLATIONS OF THE ETHICS LAWS.

Links: [BILL 29 \(2009\)](#)
[CR-122](#)
[CR-164](#)

NOTE: COUNCILMEMBER BARBARA MARSHALL PASSED AWAY ON SUNDAY, FEBRUARY 22, 2009. ALTHOUGH THERE IS A VACANCY, THE COUNCIL CONTINUES TO OPERATE IN ACCORDANCE WITH THE 9 MEMBERS IT IS ENTITLED TO PURSUANT TO SECTION 3-102, REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED. HOWEVER, THE CERTIFICATE WILL NOT REFLECT THE VACANCY ON THE VOTE RECORDED FOR THIS ITEM.

COUNCIL	03/18/09	BILL PASSED FIRST READING AND REFERRED TO EXECUTIVE MATTERS AND LEGAL AFFAIRS COMMITTEE.
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APO	Y	BAINUM	Y	CACHOLA	Y	DELA CRUZ	Y	DJOU	Y
GARCIA	Y	OKINO	Y	TAM	Y				

EXECUTIVE MATTERS AND LEGAL AFFAIRS	04/08/09	CR-122 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
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PUBLISH	04/11/09	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.
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COUNCIL/PUBLIC HEARING	04/22/09	CR-122 WAS ADOPTED. BILL 29 (2009) PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO EXECUTIVE MATTERS AND LEGAL AFFAIRS COMMITTEE.
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APO	Y	BAINUM	Y	CACHOLA	Y	DELA CRUZ	Y	DJOU	A
GARCIA	Y	OKINO	Y	TAM	Y				

PUBLISH	04/28/09	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.
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EXECUTIVE MATTERS AND LEGAL AFFAIRS	05/13/09	CR-164 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
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NOTE: IKAIKA ANDERSON WAS SWORN IN AND TOOK OFFICE AS A MEMBER OF THE HONOLULU CITY COUNCIL ON THURSDAY, MAY 14, 2009 REPRESENTING DISTRICT III.

COUNCIL	05/27/09	CR-164 ADOPTED AND BILL 29 (2009) PASSED THIRD READING.
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ANDERSON	Y	APO	Y	BAINUM	Y	CACHOLA	Y	DELA CRUZ	Y
DJOU	Y	GARCIA	Y	OKINO	Y	TAM	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


BERNICE K. N. MAU, ACTING CITY CLERK


TODD A. APO, CHAIR AND PRESIDING OFFICER